1944.

File No. B. Bombay Legislature Members (Removal of Disqualifications) 1944

Legal Department

B BRANCH

Subject:—

A Bill to amend the Bombay Legislature Members (Removal of Disqualifications) Act, 1937

(Insertion of new section 4 in Bom I of 1937)

Bom. Act I of 1944

E page-8 / 1944

File No. B Bom L Legis (Removal of Disqualifications) /44

Gen. 191 e.

274-B

Submitted.

Principal Dr. G.S. Mahajani having decided to accept the offer of the Government of India to work as a non-official member of the Central Selection Board to select - cadets for Army Commissions for six months on a salary of Rs.1,000/- p.m. requested Governnont that as he would be holding an office of profit ubder the Crown in India by accepting the offer, necessary steps be taken to remove any disqualification invloved for him to continue as a member of the Bombay Legislative Council. Orders of Govt. were therefore obtained for removing the disqualification incurred by Dr. Mahajani by passing the paccessary legislation.

2. Although in the present case it is necessary to remove the disqualification in an individual case only viz., of Dr. Mahajani, the Bombay Legislative Members (Removal) of Disqualification) Act, 1937, may preferably be amendmed by inserting a separate section in the said Act on thelines of clause (c) of section 2 of Ordinance No.LXIIX of 1942 so that similar cases can be dealth with fn furthre without resorting to fresh legislation, as a certificate of the Government of Bombay will be all that womuld be necessary to remove the disqualification. The requisite draft Bill at pp.23-24 post prepared by the R...A. is put up herewith for the approval of Government.

3. It is true that when the Bombay Legislative Members (Removal of Disqualifications) Act, 1937, was amended in 1940, the Bill in that behalf was not published by theH.D. for public criticism (cf. H.D. file below). Since then, however, the G.S. in para 2 of his Circular No.201 (12) dated the 4th August 1941 has directed that ~~xhmx~~ in the absence of Legislature

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previous...

previous publication for the purposex of eliciting public opinion should be the normal course with any Bill of any importance, unless there are good reasons to the contrary. Since, there do not appear to be any sapecial reasons for dispensing with the previous publication thenormal course of publishing the Bill for eliciting public opinion may be adopted.

4. The papers may be submitted to H.E. through all the Advisers (Vide G.S.'s Circular No.201(41) dated the 30th September 1941).

5. Under executive instructions, the Bill requires the previous concrrence of the Governor General. (Vide G.S.'s Circular No.201(12) dated 18th December 1938) after Government approves of the proposed legislation, printed copies of the Bill and the Statement will be sent to the G.S. for obtaining H. E. the Governor General's cone currence.

S.W.Dhurandhar.
Id/-
20-9-43.

S.S.
Id/- K.M.R.
20/9

P.A.
Id/- S.L.C.
21/9

D.S.
N.K.D.
Id/-
22/9

Secy.
Id/- P.N.M.
29/9

C.S.
Id/- 4/10/43

A(H) Id/- 5/10/43
A(E) Id/- 6/10/43
A(R) Id/- 7/10/43
A(F) Id/- 7/10/43.

H.E.(G.S.)

H.E. agrees.

Id/-
9/10

JPE.13/7/56.4c.

Office of the Governor's Secretary

With reference to this Office unofficial reference No.210(89), dated 19th October 1943, L.D. is informed that intimation has been received from the Secretary to the Govenor-General(Public) to the effect that the Governor-general is advised that the retrospective provision in clause 2 of the Bombay Legislature Members (Removal of Disqualifications) (Amendment) Bill 1943, cannot cure a disqualification that has been incurred already . Attention has been invited in this connection to para 2 of the Defecnce Department letter No.05010/3539/II/M.S.4 dated the 14th May 1940 to all Provincial Governments. The Governor-General concurs in the publication of the Bill subject to the omission of the words "shall never be deemed to have been and occurring in clause 2 of the Bill, and also in its enactments, provided that no important objections to it are brought forwrd of which the Governor-General ought to be made aware before he agrees that the Bill should become law and that no substantial amendments are considered to be necessary after publication. Minor and unimportant amendments may be made without refeering to him againa but should be reported to this Office afterwards for communication to the Secretary to the Governor General (Public).

Sd/- ....

for Secretary to the Governor of Bombay.

U.R. to L.D. No.2101(89),

dated 11th November 1943.

JPE.13/7/56.
4 copies.

Regr.No.1056-M?S./D-1.

No.05010/3539/II/M.S.4
Government of India,
Defence Department,
Simla, the 14th May 1940.

To

All Provincial Governments (Except the Govt. of the North West Frontier Province).

Members of Provincial Legislatures called to Army, Naval or Air Force service exemption from the provisions of section 69(1)(a) of the Government of India Act, 1935.

Sir,

In am directed to refer to this Department letter No.05010/3539/MM.S.4, dated the 6th January 1940, and to state that a member of a Provincial Legislative Assemblyor Legislative Council who has been called up forservice in the Army in India Reserve of Officers, Indian Territorial Force, or other branches of His Majesty's Naval, Military or Air Forces would it is apprehended, be regarded as holding an office of profit under the Crown in India within the meaning of cluase (a) of sub-section (1) of section 69 of the Government of India Act, 1935, with the result that he will be disqualified from continuing as such member unless the office held by him isdeclared by an Act of the Provincial Legislature not to disqualify its holder. I am, therefore, to request that, if the Provincial Government see no objection, action may kindly be taken to pass such an Act, if that has not already been done.

2. The Provincial Government will doubtless realise that in the absence of such an Act the seats of those members of the Provincial legislaturewho have been called to Army service have automatically become vacant, and no ostensible assignment of retrospective effect to a measure that may now be enacted will affect the fact that the seats have become vacant. The enactment will however render the member whose seat has become vacant eligible for reelection.

3. As intimated in this Department's letter referred to above, necessary action will be taken here to exempt sitting members of the Provincial Legislature who have been called up from the operation of rule 332 of the Regulations for the Army of India.

I am,Sir etc.

Sd/- P.X.Mason
Dy. Secretary to the G. of I.

No.05010/3539/II/M.S.4

Copy of the above is forwarded to the Legislative Department for information.

Sd/- J.C.D Bruce,Major
Under Sec. to the G. of I

JPE.13/7/56.4c.

Office of the R.L.A.

The Bill as originally drafted was inteded to enable the removal of the disqaalifacation already incurred by Dr. G. S. Mahajani, M.L.C. by his acceptance of the office of a non-official member on the Selection Board For Cadets for Emergency Commissions at Jabbulpore. Dr. Mahajani accepted the office at the instance of the Government of India as well as of the Government of Bombay and he did so the more readily in the exepctation that he would r tain his seat as M:L.C. He had before him the Bombay Legialature Members (Removal of Disqaualifications) Act, 1937 (Bom. I of 1937), which was enacted ao as to have retrospective operation in similar circumstances, and when he approached this Government for the removal of the disqaalification on the lines of that Act he was informed that necessay legislation would be undertaken. The Bombay Act I of1937 was apparently based on the view ohat retrospective legislation was intra vires; That Act has not so far been challegged, and there seems no authoritative pronouncement of any court in India which runs counter to the view on which the Act is based. There is of course much force in the Government of India view that an Act of Provincial Legislature cannot remove a legislature member's disqualification with retrospective effect so as to prevent his seat as M.L.A. or M.L.C. becoming vanant. But that viwew is not entirely free from dhoubt. Having regard to the peculiar circumstances of

ther....

the present case, it would not therefore be unreasonable for G. S. to ask the Governor-General to give his concurrence to the Bill as drafted, including the retrospective provisions, which is on the lines of Bombay Act I of 1937 to which no objection has so far been raised from any quarter.

Id/- P.N.M.
3/12/43.

Remembrancer of Legal Affairs.

H.E.( ) No. 8953 Dt.4/12/43.

JPE.13/7/56.
4 copies.

Office of the Governor's Secretary.

L.D. is informed that intimation has been received from the Secretary to the Governor-General (Public) that the Governor-General is advised that the Provincial Government are not competent to enact the retrospective provision in clause 2 of the Bill and that the provision is likely to be upset if challenged in the courts.

Subject to this observation, His Excellency the Governor-General has concurred in the publication of the Bombay Legislature Members (Removal of Disqualifications) (Amendment) Bill, 1943, without any amendments, and in its enactment provided that no objections to it are brought forward of which the Governor General ought to be made aware before he agrees that the Bill should become law and that no substantial amendments may be made without referring to him again but should be reported afterwards to this Office for communication to the Secretary to the Governor-General (Public).

H.E. the Governor is prepared to take the risk involved in the retrospective provision of the Bill being challenged in the courts and the Bill may therefore be published for public opinion.

Sd/- ....

Secretary to the Governor of Bombay.

U.R to L.D. No.201(89),

dated the 17th January 1944, with L.D.papers.

JPS.13/7/56.
4 copies.

CONFIDENTIAL

No. 66-Confl.

Legal Department,
Bombay Castle, 25th February 1944.

From

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Secretary to the Government of Bombay;

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay Legislature Members (Removal of Disqualification) Act, 1937.

Sir,

With reference to your Memorandum No.201(89), dated the 17th January 1944, on the above subject, I am directed to inform you that the Bill to amend the Bombay Legislature Members (Removal of Disqualification) Act, 1937, was published for public criticism in Goverment Notification, Legal Department, No.587, dated 22nd January 1944. With reference to the objections invited to the Bill, I forward herewith a copy of the letter No.364, dated 16th February 1944, from the Secretary, Indian Merchants' Chamber, agreeing with the principle of the Bill. No criticism has been received from any other quarter. No modification or alteration in the Bill is, therefore, called for.

2. I forward herewith a copy of the said Bill prepared by His Excellency the Governor of Bombay under paragraph

(2).....

(2) of the Proclamation dated the 4th November 1939 issued by him under section 93 of the Government xxxx of India Act, 1935.

3. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

4. The subject matter of the Bill falls under clause (a) of sub-section (1) of section 69 of the Government of India Act, 1935, read with entry No. 11 in the Provincial Legislative List in the Seventh Schedule to the Act. As the bill does not relate to any matter enumerated in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the Governor-General with reference to paragraph (2) of the proclamation and the section 107(2) of the Government of India Act, 1935.

5. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

6. I also forward herewith one spare copy of the Bill.

Your obedient servant,

Id/- P.N.M.
25/2/44.

Secretary to the Government of Bombay,
Legal Department.

No.201(89),
Office of the Governor's Secretary,
Government House,
Bombay, 1st March 1944.

From

D.Symington, Esquire, CIE.ICS.
Secretary to the Governor of Bombay

To

The Secretary to Government,
Legal Department, Bombay.

Subject: The Bombay Legislature Members (Removal of Disqualification)(Amendment) Bill, 1943.

Sir,

With reference to your letter No.66-Confl. dated the 25th February 1944, on the above subject, I am directed to return herewith the copy of the Bombay Legislature Members (Removal of Disqualifications)(Amendment) Bill, 1943, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act,* aforesaid paragraph, His Excellency the Governor is pleased to declare that he assents to the Bill in the name of His Majesty.

* 1935, and to state that under the Provisions of the

Your obedient servant,

Sd/- ....

Secretary to the Governor of
Bombay.

JPE.13/7/56.4c-

Acts.

Publication of the Bombay Legislature Members (Removal of Disqualifications)(Amendmen) Act, 1944.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 696
Bombay Castle, 3rd March 1944.

Letter to the Secretary to the Governor, No.66-Confl, dated the 25th February 1944.

Letter from the Secretary to the Governor, No.201(89) dated the 1st March 1944.

With reference to your letter No.66-Confl, dated the 25th February 1944, on the above subject, I am directed to return herewith the copy of the Bombay Legislature Members (Removal of Disqualifications) (Amendment) Bill 1944, prepared by His Excellency the Governor under paragraph (2) of the Proclamation, dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, and to state that under the provisions of the aforesaid paragraph, His Excellency the Governor is pleased to declare that he assents th the Bill in the name of His Majesty."

RESOLUTION.1- The law should be published as Bombay Act No. I of 1944 in the Bombay Government Gazette dated the 3rd March 1944.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette.

By order of the Governor of Bombay,

Sd/- (S.L.Chaudhari

for (P.N.MOOS,
Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 gazette copies of the Act may be forwarded to the Legal Department),

etc....

JPE.13/7/56.4c.